

## ***United States - Transitional Safeguard Action on Combed Cotton Yarn from Pakistan***

### **First Submission of the United States**

#### **Executive Summary**

1. This dispute involves an attempt by Pakistan to use the WTO dispute settlement process to force a re-opening of the safeguard investigation conducted by the United States on Category 301 imports of combed cotton yarn from Pakistan. That investigation conclusively demonstrated that a surge in Category 301 imports from Pakistan caused serious damage and actual threat of serious damage to the domestic combed cotton yarn for sale industry. During the time of the surge, all relevant indicators of the industry's economic performance deteriorated substantially: production dropped, shipments declined, inventories increased, unfilled orders fell, profitability evaporated, market share contracted, investment stagnated, employment declined, and mills exited the industry.<sup>1</sup> Based on this compelling evidence, the United States acted in full conformity with the WTO Agreement on Textiles and Clothing (ATC) and established a transitional safeguard on imports of combed cotton yarn from Pakistan.

2. This is precisely the kind of situation that the special transitional safeguard of Article 6 is designed to cover. In challenging the U.S. action, Pakistan fails to offer legally sufficient evidence and arguments to establish a *prima facie* case that the U.S. transitional safeguard was inconsistent with its obligations under the ATC. Rather, Pakistan would have the Panel believe that its role is to reopen the safeguard investigation, consider new evidence, and even speculate about hypothetical measures not in existence. There is no basis in the DSU for Pakistan's request. This would take this Panel well beyond its proper role of considering whether, based on an objective assessment of the facts, the transitional safeguard action on Category 301 imports of combed cotton yarn from Pakistan conforms with Article 6 of the ATC.

#### **The United States Defined the Domestic Industry as the Combed Cotton Yarn for Sale Industry in Accordance with the ATC.**

3. Consistent with the text, object, and purpose of the ATC, the United States identified the combed cotton yarn for sale industry as the "domestic industry producing like and/or directly competitive products" and excluded vertically integrated producers which manufacture combed cotton yarn for their own consumption in the process of producing a final product (fabric, apparel, or home furnishings). Combed cotton yarn for sale establishments produce combed cotton yarn and sell it in the market. Thus, this yarn directly competes with Category 301 imports. In contrast, vertically integrated producers produce fabric, apparel, or home furnishings and manufacture combed cotton yarn as an input into their production chain. The yarn manufactured by vertically integrated producers is not intended for release onto the market and thus is not "produced" for purposes of the U.S. market and does not compete with Category 301 imports.

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<sup>1</sup> The results of this investigation are set out in *Report of Investigation and Statement of Serious Damage or Actual Threat thereof: Combed Cotton Yarn for Sale: Category 301*, December 1998 ("Market Statement").

4. The U.S. identification of the domestic industry as the combed cotton yarn for sale industry clearly accords with language of Article 6.2 of the ATC, which requires an analysis of the domestic industry *producing like and/or directly competitive products*. Combed cotton yarn producers, not vertically integrated establishments, produce a like and directly competitive product to Category 301 imports. The special safeguard provision of Article 6 affords importing Members a mechanism to address serious damage and/or actual threat of serious damage to its domestic industry caused by a surge in *imports*. But, if the products of domestic producers are *not* directly competitive with imports – such as in the case of yarn manufactured by vertically integrated producers for their own consumption – the need for safeguard action would not arise.

5. Pakistan offers several claims which fail to establish that the U.S. identification of the domestic industry runs counter to Article 6. First, Pakistan wrongly assumes that Article 6 transitional safeguards must be interpreted using other WTO agreements. The ATC differs significantly from other, non-transitional WTO agreements in terms of its status as a transitional agreement, its purpose of gradually integrating the textiles and clothing sector into the GATT, and its language regarding the definition and treatment of “domestic industry.” If, for example, there had been no intent to create a difference between the transitional safeguard of the ATC and the Safeguards Agreement, negotiators would not have included a safeguard provision in the ATC; rather they would have relied on Article XIX of the GATT and the Safeguards Agreement. Accordingly, the Panel should look to the text and purpose of the ATC – not other WTO agreements or interpretations of other agreements – to interpret Article 6 for non-integrated textile and clothing products.

6. Second, Pakistan erroneously claims that the United States did not consider the yarn sold by vertically integrated producers on the open market. These amounts are *de minimis*. Nevertheless, the United States considered *all* yarn sold on the open market – whether it was produced by combed cotton yarn for sale producers or manufactured by vertically integrated producers of another product. With very limited exceptions, vertically integrated producers consume the combed cotton yarn they manufacture in their production of a final product for sale. On rare occasions, vertically integrated producers sell excess production of combed cotton yarn on the open market and also may purchase outside yarn. The United States verified that vertically integrated producers purchase roughly *two percent* of their consumption of combed cotton yarn from the market and sell roughly *one percent* of their production on the open market. Contrary to Pakistan’s assertions, official U.S. Bureau of Census production statistics account for the *de minimis* amount of yarn sold by vertically integrated producers and record *all* yarn sold into the market – no matter how *de minimis* – as yarn for sale *regardless* of the identity of the producer.

7. Third, Pakistan asserts that the failure to account separately for imports of combed cotton yarn purchased by vertically integrated producers, if any, represents a serious flaw in the U.S. analysis. Pakistan provides no factual basis for the contention that vertically integrated producers

import combed cotton yarn. However, even if they did, the amount in question would constitute a subset of the already *de minimis* amount of yarn (two percent) that vertically integrated producers may purchase on the open market (which includes domestic production and imports). Excluding such *de minimis* quantities from the import figures used in the analysis of serious damage would not have affected the results in any statistically significant way.

8. Finally, contrary to Pakistan's assertion, the membership of American Yarn Spinners Association (AYSA) fully represents the yarn for sale industry even though five of its members produce fabric in addition to sales yarn. These members produce fabric and sales yarn in *separate* divisions as *separate* profit centers and report their production data *separately*. The *separate* yarn for sale divisions of these five AYSA members are therefore part of the defined yarn for sale industry.

9. In sum, the U.S. approach to the identification of the domestic industry was fully consistent with the ATC. Pakistan's belief that Article 6 required the United States to include vertically integrated producers of fabric, apparel, or home furnishings within the scope of the "domestic industry producing like and/or directly competitive products" amounts to suggesting that Article 6 requires a Member to incorporate separate industries and include products that do not compete with imports. Neither the text nor the purpose of the ATC support Pakistan's claim, and the Panel should reject it accordingly.

**The United States Determined That a Surge in Category 301 Imports Had Caused Serious Damage to the Domestic Industry In Accordance With Article 6 of the ATC.**

10. The United States satisfied the requirements under Articles 6.2 and 6.3 of the ATC in reaching the conclusion that imports of combed cotton yarn caused serious damage to the domestic industry. The Market Statement clearly documents sharp increases in Category 301 imports and the effect of these soaring levels of imports on the eleven variables enumerated in Article 6.3 of the ATC, as well as additional variables that the United States identified as relevant and material. The U.S. investigation demonstrated that total Category 301 imports of combed cotton yarn nearly doubled between January-August 1997 and January-August 1998, and imports from Pakistan nearly *quadrupled*, increasing 283.2 percent in the same period. The price of imported combed cotton yarn – particularly from Pakistan – was significantly below the average U.S. price of combed cotton yarn for sale.

11. The impact of these surges of low-cost imports on U.S. industry was unmistakably serious damage, and the evidence is clear and striking. As these imports were surging during the relevant time period, the economic variables set out in Article 6.3 deteriorated substantially: U.S. *domestic production* dropped 10.2 percent, *shipments* declined 14.2 percent, *productivity* lagged four percent, *capacity utilization* declined, *inventories* increased 145.9 percent, the *share of the market* held by U.S. producers contracted ten percentage points, *exports* fell by one-third, 6.6

percent of the production *workforce* left the the industry, *profitability* was nearly cut in half, and *investment* stagnated. Two mills exited the industry during this eight-month period.

12. The United States also demonstrated that increased imports – not other factors – caused serious damage to the domestic industry producing like and/or directly competitive products. While imports were taking a greater share of the U.S. market, the apparent domestic market remained relatively constant during the investigation period – indicating that there was no change in consumer preference. Likewise, technological changes could not account for the serious damage given that there had been no significant new technological changes in the defined industry during the period covered by the investigation.

13. Every relevant economic indicator, taken individually, shows an industry irrefutably suffering serious damage resulting from the surge of Category 301 imports. Taken collectively, the indicators reveal a state of serious damage. With this evidence, it is hard to draw any conclusion other than that the domestic industry was in immediate peril and had suffered serious damage during the period analyzed in the U.S. investigation. Pakistan leaves this clear record of serious damage caused by the import surge unchallenged.

14. Pakistan assails the U.S. determination of serious damage on a misplaced reliance on interpretations of other WTO agreements and otherwise fails to establish any violation of the ATC. Pakistan suggests that the Panel should impute interpretations of the Safeguards Agreement to its causation analysis under the ATC and of the Safeguards and Anti-Dumping Agreements to establish benchmarks for the minimum period for which data must be collected. Pakistan provides no support for either claim other than asserting that interpretations of other agreements are somehow relevant. As is plain from the text, the ATC and non-transitional WTO agreements were drafted in different ways and use different language. And the ATC has a fundamentally different purpose from other non-transitional WTO agreements.

15. The United States clearly demonstrated causation, even under the non-ATC framework Pakistan references. The United States examined the relationship between an upward trend in imports and negative trends in economic variables and reasonably concluded, based on this analysis, that the surge in imports of Category 301 combed cotton yarn caused serious damage to the domestic industry. As set forth conclusively in the Market Statement, the United States established that imports from Pakistan were surging at the same time that conditions in the industry were deteriorating, and that other factors were not a cause.

16. The United States also satisfied ATC requirements to provide specific, relevant factual information that is as up-to-date as possible. Pakistan criticizes the U.S. determination claiming that the *eight month* time period used by the United States to establish serious damage was too short. Pakistan apparently assumes that, because the United States presented the most current data in an eight-month format, the United States somehow limited its inquiry to eight months. Pakistan is wrong. The Market Statement reflected comprehensive data for *two-years and eight-*

*months* – from January 1, 1996 through August 1998, and included import data through October 1998. At the time of the U.S. request for consultations, this data constituted the most up-to-date data available, which for imports was current through October 1998, and for the other variables was current through August 1998. This data revealed that during the early part of the period under investigation, many industry indicators were relatively flat, but others revealed a worrisome trend. Conditions during 1998 – at which time global imports surged 91.3 percent and imports from Pakistan surged 283.2 percent – validated early indications of industry distress.

**The United States Determined that Category 301 Imports Constituted an Actual Threat of Serious Damage to the Domestic Yarn for Sale Industry in Accordance with Article 6 of the ATC.**

17. The United States also demonstrated, based on a prospective analysis, that imports of combed cotton yarn from Pakistan were causing an actual threat of serious damage to the domestic combed cotton yarn for sale industry. The analysis of the market starkly revealed that every major benchmark of economic performance during 1998 was deteriorating and would likely continue to deteriorate. The data demonstrated that as imports from Pakistan were surging, output was dropping, productivity was deteriorating, capacity utilization was falling, domestic market share was declining, employment was decreasing, prices were falling, profits were diminishing, investment was stagnating, inventories were increasing, unfilled orders were falling, and mills were exiting the industry.

18. In addition, world prices – particularly from Pakistan – were substantially below domestic prices. For all of Category 301, the world price was 7.8 percent below the average U.S. price; the price from Pakistan was 26.2 percent below the average U.S. price. In specific areas where imports were concentrated, the world price was 18 percent below the average U.S. price, and the Pakistan price was 28.3 percent below the average U.S. price. Because price is a major factor in generating orders, the United States concluded that combed cotton yarn imports – particularly low-priced imports from Pakistan – would *continue to* rise while domestic production, market share, and return on investment would *continue to* fall.

19. Pakistan neither contests these findings nor advances any arguments that establish a violation of the ATC. Rather, Pakistan introduces highly misleading data regarding Pakistan's import trends *subsequent* to the investigation that is outside the scope of this proceeding. Developments *subsequent* to the initial determination were not available to the United States at the time of its investigation and, accordingly, should not be considered.<sup>2</sup> Pakistan also wrongly

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<sup>2</sup> Pakistan's introduction of new evidence is also highly misleading. Although outside the scope of the Panel's review, the United States notes that a two month decline in year-ending imports of Category 301 yarn from Pakistan is not a meaningful trend. Imports of Category 301 yarn from Pakistan have a history of high month-to-month volatility, and Pakistan exports the capacity to surge dramatically in a short period of time. Since 1996, monthly imports from Pakistan have ranged from zero to over one million kilograms. As it turned out, imports from

suggests that the Market Statement did not rely on the most up-to-date information and therefore cannot support the U.S. determination of actual threat of serious damage. As discussed above, the United States relied on the most up-to-date information in making its assessment of actual threat of serious damage.

**The Attribution of Serious Damage and Actual Threat of Serious Damage to Pakistan Fully Accords with Article 6.4 of the ATC.**

20. The U.S. attribution of serious damage or actual threat of serious damage to a sharp and substantial surge in Category 301 imports from Pakistan was fully consistent with the requirements of Article 6.4 of the ATC – which authorizes the imposition of a transitional safeguard on a *Member-by-Member* basis.

21. Between January-August 1997 and January-August 1998, Pakistan's Category 301 imports were surging by 283.2 percent compared to 73 percent from other sources; Pakistan's share of domestic production quadrupled; and Pakistan's imports as a percentage of total imports doubled. Moreover, prices of Category 301 imports from Pakistan, in comparison with the rest of the world, were substantially lower – 26.2 percent below the average U.S. price and 20 percent below the average world price. For a specific subset of Category 301 (where imports from Pakistan were concentrated), imports from Pakistan entered the United States at a value of 28.3 percent below the average U.S. price and 12.6 percent below the average world price.

22. Pakistan neither contests these figures nor establishes a violation of Article 6.4 of the ATC. Instead, Pakistan attempts to obfuscate the clear showing of attribution by asserting – without any basis – that Article 6.4 required the United States to undertake a specific comparative analysis between Pakistan and Mexico. Pakistan's suggestion that the United States was required to conduct a specific assessment of another Member's exports has no support in the ATC. Article 6 does not impose such a requirement. Rather, Article 6 provides that import levels and trends are one of the several factors to be analyzed.

23. Contrary to Pakistan's assertion, the United States carefully considered the increase in imports from other sources as a factor in its Article 6.4 attribution analysis. The Market Statement clearly reflects that the U.S. analysis accounted for the increase in imports from its Free Trade Agreement (FTA) partners. The United States concluded that – even though imports from its FTA partners were also increasing – serious damage or actual threat of serious damage was attributable to the 283.2 percent surge in imports from Pakistan.

**The Transitional Safeguard on Category 301 Imports Relies on the Best Available Data Consistent with Article 6.7 of the ATC.**

Pakistan on a year-ending basis declined through August 1999, but Category 301 imports from Pakistan then surged again to the highest levels ever recorded, and Pakistan ended up actually overshipping the first year limit.

24. The United States employed an appropriate and reasonable methodology for collecting and analyzing the data used to support its determination that the surge in imports from Pakistan had caused serious damage and actual threat of serious damage to the U.S. combed cotton yarn for sale industry. The United States conducted its investigation using the best information available and relied on official data to the extent possible. Where official data were not available, the United States used information from other sources and verified this information. The United States also relied on published data to the extent that it was available.

25. The ATC sets forth no methodology for the collection and analysis of data and affords the importing Member discretion in establishing its methodology, including relying on data furnished by the private sector. The ATC only requires that the Member accompany its request for consultations with specific, relevant, and current factual information related, as closely as possible, to identifiable segments of production and to the 12-month reference period. As discussed above, the United States fully complied with these requirements. U.S. data – reflecting data for 1996, 1997, and the first eight months of 1998 and including the most current import data through October 1998 – was as up-to-date as possible. The data enabled the United States to evaluate the level of imports and the effect of the increase in imports of combed cotton yarn on the defined domestic industry, as reflected in such economic variables as output, productivity, capacity utilization, inventories, market share, exports, wages, employment, domestic prices, profits and investment.

26. The United States verified all data it received from the private sector to the extent possible. None of Pakistan's arguments to the contrary establish a violation of the ATC. Rather, Pakistan makes unfounded allegations and introduces new evidence outside the scope of this dispute in an effort to cast doubt on the reliability of the U.S. data.

27. First, Pakistan introduces a market statement produced in 1997 on combed cotton *ring spun* yarn (a subset of Category 301 combed cotton yarn) to suggest that the U.S. data was unreliable. Given that the Panel is limited to the evidence used by the Member in making its determination, this document is outside the scope of the Panel's review and should not be considered. Nevertheless, this document – which the United States used to consider transitional safeguard action on imports from Pakistan of combed cotton ring spun yarn – only *enhances* the integrity of the Market Statement. The United States ultimately decided to drop its Article 6 action after ongoing verification of the data raised questions about the data in the 1997 statement. Thus, far from suggesting that the United States used unreliable data, the circumstances surrounding the U.S. decision not to take transitional safeguard action on combed cotton ring spun yarn demonstrates the extent to which the United States used the best information available, verified the information to the extent possible, and continued to monitor the industry to ensure that the information that ultimately formed the basis for the Market Statement was accurate.

28. Second, Pakistan attempts to mislead the Panel into questioning the accuracy of production statistics supplied by the AYSA by introducing 1998 data released by the U.S. Bureau

of Census *subsequent to* the preparation of the Market Statement. These data were *not* available to the United States at the time it prepared the Market Statement and should not be considered. Nevertheless, contrary to Pakistan's assertions, the 1998 Census data *support* AYSA data. Both AYSA and Census data – which compare two different time periods – showed a sharp decline in production in 1998. The fact that the level of decline was different for the two data sets does not indicate that either is incorrect. Rather, they both confirm that the trend was down during 1998 and imply that the greatest downturn in production occurred during the first eight months.

29. Third, Pakistan's assertions regarding the accuracy of AYSA data on profitability and investment are unfounded. The United States verified the profit and investment information to the extent possible, and Pakistan provides no reason to question their accuracy.

30. Finally, Pakistan makes a number of misleading allegations regarding plant closures and employment trends. The United States correctly determined that, during the period of its investigation, three establishments exited the defined industry and that, as a result, 423 production worker jobs left that industry. That two of these plants continue to operate *in another capacity and in other markets* is not relevant to the existence of serious damage in the defined industry. Rather, what is relevant is that the deteriorating industry conditions (i.e., dropping production, declining profitability, increasing inventories, etc.) faced by the combed cotton yarn industry at the time of the surge of imports from Pakistan directly caused these mills to exit the combed cotton yarn industry. Because of the situation they faced, they were no longer viable industry participants and were forced to either shut down entirely or produce different products.

31. Pakistan goes to great lengths to assert that "retooling" should somehow mitigate the serious damage done to the industry by the surge in imports. In its view, an Article 6 transitional safeguard is inappropriate if an industry is able to successfully restructure in response to an import surge or if an employee in a failing mill is able to find a job in another industry.

32. The United States strongly rejects this contention. Restructuring does not require a situation of serious damage. Rather, it is part of the normal evolution of an industry. The case before the Panel is one of *forced* restructuring which occurred as the direct result of serious damage to the industry caused by a surge in imports. The fact that some mills went on to restructure and retool in no way detracts from the serious damage facing the combed cotton yarn industry when the United States issued its Market Statement in December 1998. These mills and their employees – although lucky to find a new home in another industry – had no choice but to abandon the combed cotton yarn industry.

33. Contrary to Pakistan's suggestion, the United States did not base its determination of serious damage and actual threat thereof *solely* on the fact that three mills and their employees exited the combed cotton yarn industry. While important, the data on employees and firms exiting the defined industry constitute one of the many factors that the United States examined. As discussed above, the United States based its determination on a wide-range of additional



factors, including production, shipments, exports, capacity utilization, inventories, unfilled orders, wages, productivity, profits, investment, market share, import share, prices, and the apparent domestic market.

34. These factors, taken alone or together, revealed a domestic industry in peril – with declining production and shipments, deteriorating financial performance, rising inventories and falling unfilled orders, dwindling market share, contracting exports, and stagnating investment. Based on careful consideration of *all* these factors – not just the number of employees and firms exiting the industry – the United States concluded that the 283.2 percent surge in imports from Pakistan had caused serious damage and actual threat of serious damage to the domestic combed cotton yarn for sale industry.

### **Conclusion**

35. For the foregoing reasons, the United States respectfully submits that its transitional safeguard measure applied to imports from Pakistan of combed cotton yarn satisfies U.S. obligations under the ATC. Pakistan's claims to the contrary are without merit and the Panel should reject them.